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Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1969

IMPERIAL REFINERIES OF MINNESOTA, INC.
Plaintiff-Appellant

VS.

THE CITY OF ROCHESTER
Defendant-Respondent

PETITION FOR REARGUMENT AND RECONSIDERATION OF THE PER CURIAM ORDER OF THE ABOVE ENTITLED COURT DATED OCTOBER 13, 1969, FILE NO. 171

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TO THE HONORABLE JUDGES OF THE ABOVE ENTITLED COURT: Eighth Circuit

The petitioner herein states, alleges and shows to this Court:

1. That the undersigned attorney duly received through the United States mail on October 15, 1969, the Notice and Order of this Court dismissing the appeal herein by per curiam decision, stating the reason for want of a substantial federal question, and further states, represents and shows to the Court that even though the amount in controversy is small and not of great consequence, nevertheless it does not come within the rule of de minimus non curat lex, and even though this may be so, the Court should take judicial notice of the fact that the State of Minnesota

has many and varied municipalities and that many and various property owners own property within said municipalities which no doubt will be subject to improvement and taxation as in the case before this Court, and subject to the same rights as are being raised by this appellant, and we respectfully submit that under these conditions a substantial federal question, to-wit: the due process clause of the 14th Amendment, is amply present.

2. The case appealed from is Imperial Refineries of Minnesota, Inc. v. the City of Rochester (Ref. 165 N.W. 2d 699).

3. The jurisdiction of this Court is invoked upon the following grounds:

a. Section 429.081, *Minnesota Statutes Annotated*, as appears in Appendix B, p. 1 of the brief, being Secs. of *Minnesota Statutes Annotated* 429.011 to 429.111, being an amendment to Secs. 429.01 to 429.18 of Vol. 25 of said statutes, as appears in the pocket part to be used in the year 1969 of said Vol. 25, all pertaining to the power of a municipality to construct sewers, water mains and a water tower within its jurisdiction, and giving authority to assess the benefited property owners for the expenses or disbursements thereof. The statute provides for an appeal to the District Court wherein the said improvement is constructed, the time for appeal being twenty (20) days after the adoption of the assessment by the Coomon Council of said municipality wherein the construction has taken place, *but said statute makes no provision for notice to be given to the property owners of the adoption of the assessment for the improvement, thereby starting the 20-day period with which the aggrieved property owner may appeal to the District Court.*

all in violation of the due process clause of the 14th Amendment to the Constitution of the United States (see *U.S. Constitution*, Vol. 14, p. 24), thereby rendering the statute unconstitutional.

4. The trial court and the Supreme Court of Minnesota, in view of the fact that the same question had been raised in both courts, held that the statute is constitutional and valid (R., p. 16, f. 3—see Minnesota Supreme Court decision filed with the brief herein), thereby raising a jurisdictional question in the proceedings (see *Minnesota Statutes Annotated*, Sec. 429.081, as appears in the appendix in the accompanying brief).

5. The jurisdiction of this Court appears in *28 U.S.C. Annotated*, Sec. 1257 (2). The judgment appealed from was entered February 28, 1969. An appeal was filed April 8, 1969.

6. The jurisdiction of this Court is recognized by this Court in the following decisions

Deloach v. Rogers, C.A. Ga. 1959, 268 Fed. 2d 928;
Metlakatla Indians v. Egan, 80 S. Ct. 1321, 363 U. S. 555, 4 L Ed. 2d 1397;
Cohens v. Virginia, 19 U.S. 264, 6 Wheaton 264, 5 L. Ed. 257;
Hague v. Committee for Industrial Organization, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423.

7. That this Minnesota statute violates the due process clause of said 14th Amendment is obvious, and appears to be a federal question.

In conclusion, we respectfully request the Court to reconsider this matter, vacate the order of October 13, 1969, and enter this appeal on the docket of this Court.

The undersigned hereby certifies that this motion is taken in good faith and is not interposed for the purpose of any delay in this matter but solely for the purpose of obtaining justice and fair dealings for his client.

Respectfully submitted,

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